

The 2nd December, 1970

No. 5393/Project/1609/70.—Whereas, it appears to the Governor of Haryana that land is likely to be needed to be taken by the Government, at the public expense, for a public purpose, namely, for installing Kiln near 11 Kilometre Stone of Dadri, Mahendragarh Road in village Mandola and Abidpura Tehsil Dadri, District Mahendragarh for constructing Badhwana Distributary system below R. D. 62,000, it is hereby notified that the land in the locality specified below is likely to be required for the above purpose.

This notification is made under the provisions of section 4 of the Land Acquisition Act, 1894, for all to whom it may concern. In exercise of the powers conferred by the aforesaid section, the Governor of Haryana hereby authorises the officers for the time being engaged in the undertaking, with their servants and workmen to enter upon and survey land in the locality and do all other acts required or permitted by that section.

Further, in exercise of the powers conferred by the said Act, the Governor of Haryana hereby direct that action under clause (b) of sub-section (2) of section 17 of the said Act shall be taken in this case on the ground of urgency and the provisions of section 5-A of the said Act shall not apply in regard to the acquisition.

### SPECIFICATIONS

District	Tehsil	Village	Area in acres	Boundary
Mahendragarh	Dadri	Mandola	4.12	A plot of land comprising of full field numbers 25/3 and 25/8 and part field numbers 25, 25/4, 25/7, 2/2
Mahendragarh	Dadri	Abidpura	5.31	
Total:			9.43	25, 25, 25, 25 of village 9/1, 12/1, 13/1 and 14/1
				Abidpura and part field numbers 90-A of village Mandola as demarcated at site and also shown on the index plan.

By Order of the Governor of Haryana.

K. S. PATHAK,

Chief Engineer/Projects,  
Irrigation Works, Haryana,  
Chandigarh.

### LABOUR DEPARTMENT The 27th November, 1970

No. 9894-I-Lab-70/33244.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Faridabad in respect of the dispute between the workman and the management of M/s Jakh Industries, 27B-Industrial Estate, Mahrauli Road, Gurgaon.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Ref. No. 65 of 1970

between

SHRI OM PARKASH WORKMAN AND THE MANAGEMENT OF M/S JAKH INDUSTRIES, 27-B INDUSTRIAL ESTATE, MAHRAULI ROAD, GURGAON

Present:—

Shri Om Paakash workman concerned with Shri Shardha Nand.

Shri Badri Parshad, for the management.

## AWARD

Shri Om Parkash was in the service of M/s Jakh Industries, 27B-Industrial Estate, Mahrauli Road, Gurgaon. His services were terminated by the management on 8th April, 1970. This gave rise to an industrial dispute. The Governor of Haryana has been pleased to refer the following dispute for adjudication to this Court, in exercise of powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, vide Government Gazette Notification No. ID/GG/92-70/231002, dated 7th August, 1970.

"Whether the termination of services of Shri Om Parkash was justified and in order. If not; to what relief is he entitled?"

On receipt of the reference, usual notices were issued to the parties and they filed their respective statements giving rise to the following issues in the case.

1. Whether there is no industrial dispute between the workman and the management as defined under the Industrial Disputes Act, 1947.
2. Whether this court has no jurisdiction?
3. Whether the termination of services of Shri Om Parkash was justified and in order. If not; to what relief is he entitled?

The parties have led evidence but it is not necessary to go into the merits of the case as a settlement has been arrived at between the workman and the management which appears to be fair and reasonable. The workman has to be paid Rs. 210 within a period of 10 days from today in full and final settlement of his claim and he has given up his right of re-employment with the management. In the circumstances, the order of termination of services of the workman can not be held to be unjustified and I give my award accordingly in terms of the settlement arrived at between the parties. There shall be no order as to costs.

O. P. SHARMA,

Presiding Officer,  
Labour Court, Haryana,  
Faridabad

Dated 23rd October, 1970

No. 895, Dated Faridabad, the 3rd November, 1970

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad

The 27th November, 1970

No. 11067-I-Lab-70/34129.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Dalmia Dadri Cement Limited, Charkhi Dadri.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 29 of 1967

Between

THE WORKMEN AND THE MANAGEMENT OF M/S DALMIA DADRI CEMENT LIMITED,  
CHARKHI DADRI

Present:—Shri Bhim Sain, Maqan Lal and Run Singh for the Mens' Union.

Shri Shanker Lal and Matu Ram Verma for the Workers Union.

Shri Virendra Kaushik for the management.

## AWARD

The workmen of M/S Dalmia Dadri Cement Ltd., Charkhi Dadri demanded production bonus at the rate of 20 % for the year 1965 in addition to bonus under the Payment of Bonus Act at the rate of 30 per cent.

They also demanded free Medical Facilities. None of these demands were accepted by the management and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal, for adjudication,—vide Government Gazette Notification No. 155-SF-III-Lab-66/1952, dated 21st January, 1967.

- (i) Whether the workmen are entitled to the grant of profit bonus for the year 1965 at a rate higher than 4 per cent bonus already declared by the management? If so, with what details?
- (ii) Whether the workmen are entitled to the grant of production bonus for the year 1965? If so, with what details?
- (iii) Whether the free medical facilities previously available to workmen which were discontinued after enforcement of the Employees State Insurance Act should be restored? If so, with what details and if not, to what other relief if any, the workmen are entitled?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen and the management filed their written statement. The parties have produced evidence in support of their respective contentions. So far as items of dispute contained in clauses (i) and (ii) of the order of reference are concerned, a compromise was arrived at between the parties and an interim award in terms of compromise was made on 4th September, 1970 and it has been duly published,—vide Government Gazette Notification No. 8042-ILab-70/27027067, dated 11th September, 1970.

With regard to item No. 8 of the order of reference which relates to the demand for the restoration of the free Medical facilities which according to the workmen have been discontinued by the management after the enforcement of the Employees State Insurance Scheme, the workmen have produced two witnesses namely Shri Y.D. Sharma A.W.I. General Secretary, Cement Factory Workers Union, Dalmia Dadri and Shri Daya Kishan A. W 2 who is also a General Secretary. In addition the representative of the workmen relies upon the authority of the Patna High Court reported in 1966-1LLJ-1811 given in the case of Rohtas Industry. Both Shri Y.D. Sharma and Daya Kishan say that prior to the introduction of the Employees State Insurance Scheme in February, 1965, the management were running a Hospital and a Ayurvedic Dispensary in the factory premises which were primarily meant for the workmen of the factory and the workmen were getting free treatment. According to the workmen the doctors, Vaid and Nurses employed in the hospital and dispensary used to make free visits to the houses of the workmen even if their houses were situated in Dadri Town or in rural areas. According to the evidence of Shri Y.D. Sharma even the families of the workmen were covered by the medical aid provided by the management and there was no ceiling on the medical expenses which were to be incurred. It is common ground that the hospitals and dispensaries were started some time in the year 1939 and after the introduction of the Employees State Insurance Scheme in February 1965, these Institutions were handed over to a Trust known as Jagdamba Charitable Trust. The contention of the learned representative of the workmen is that the grant of these medical facilities over a period of about 25 years matured into a condition of service and these facilities could not be unilaterally withdrawn by the management on the pretext that after the introduction of the Employees State Insurance Scheme the workmen started having the benefit of free medical facilities in which the management were also contributing. In this connection reliance has been placed upon the case of Rohtas Industry reported in 1966-1-LLJ-181 in which it has been held that the Employees State Insurance Act and the rules made thereunder do not provide for discontinuation or reduction of medical benefits and the management could not withdraw the customary concessions or privileges or medical facilities enjoyed by the workmen without giving a notice of change as required under Section 9A of the Industrial Disputes Act.

The case of the management on the other hand is that the Management never established any hospital or dispensary primarily for the benefit of the workmen as claimed by them. Shri Vishnu Kumar R.W.I., Secretary of the respondent company has appeared in evidence in this connection. He says that prior to the enforcement of the Employees State Insurance Scheme the management were running a dispensary and an aushdhyala but he says that this was a charitable dispensary and aushdhyal which were meant both for the workmen as also for the general public and after the introduction of the E.S.I. Scheme the building of the dispensary and aushdhyala was handed over to the E.S.I. Shri Vishnu Kumar says that there was another charitable Eye Hospital in the Factory premises which was being run by the Jagdamba Trust and this Trust absorbed the staff of the dispensary and the aushdhyala which was previously run by the management and free medicines are being provided to the workmen as also to the general public as before. As regards the visits of the doctors of the dispensary and Vaid of the aushdhyala to the houses of the workmen and the members of their families, the witness says that these visits never extended to the houses of those workmen who live in the villages. The witness explained that the visits of the doctors and vaid to the houses of the workmen created some difficulties because the medical officers were called by the workmen to their houses even for very minor ailments with the result that the other patients had to wait in the dispensary till the return of the doctor or vaid and therefore, these visits were discontinued.

In my opinion the submissions of the learned representative of the management is correct. It is even admitted in the claim statement filed on behalf of the Dalmia Dadri Cement Factory Mans' Union that the dispensary and the aushdhyala which were being previously run by the management were charitable institutions and this fact is also established by the evidence of Shri Vishnu Kumar, R.W.I., Secretary of the respondent. The representative of the workmen did not even cross-examine the witness on this point and it cannot therefore, be said

that the management were previously running any dispensary or aushdhyala especially for the workmen. It is rightly urged that if the management out of their philanthropic motives were running a charitable dispensary and aushdhyala for the general public and the workmen of the respondent factory in their capacity as members of the general public also derived advantage from them it could not become a condition of their service and the management cannot be compelled to continue the running of the charitable dispensary or the aushdhyala. The facts in the case of Rohtas Industry reported in 1966-I-LLJ page 181 on which reliance has been placed by the workmen are wholly different and this authority is not applicable to the facts of the present case.

The learned representative of the management has also rightly submitted that even with regard to the alleged grant of medical facilities the evidence of the workmen is very vague and unreliable. No workman of the respondent factory who might have actually availed of the alleged medical facilities has cared to appear as a witness. Both Shri Y.D. Sharma and Daya Kishan who have appeared on behalf of the workmen do not say that any of them ever availed of any medical facilities from the dispensary or the aushdhyala. Their evidence is, therefore, based upon hear say information. The evidence of these witnesses is also vague with regard to the alleged visits of the doctors and v aids, to the houses of the workmen in the villages. The witnesses do not give any idea of the distance up to which the doctors and v aids travelled in order to reach the house of the workmen situated in the villages and how they travelled. It is submitted that if a workmen happened to be a resident of a far off village and came to attend the factory either on his cycle or by train, the doctor or vaid could not be expected to visit his houses for minor ailments and neglect all the patients who might be waiting in the dispensary or aushdhyala for him. With regard to the extent to which medical facilities are being claimed the evidence is also very vague. It is not stated what was the maximum limit of the expenses which the doctor or vaid could incur on the treatment of any particular workman or his family members and obviously the workmen cannot claim that they have acquired a right to compel the management to spend unlimited amount upon their treatment.

Shri Vishnu Kumar has explained that the visits of the doctor and the vaid to the houses of the workmen has been discontinued because the patients attending the dispensary or the aushdhyala were inconvenience on account of the absence of the doctors and v aids who were some time called to the houses of the workmen on minor ailments. As regards the alleged reduction in the medical facilities there is not a work in the evidence of Shri Y.D. Sharma or that of Daya Kishan as to the extent to which the grant of the medical facilities has been reduced. The main grievance is only with regard to the stoppage of the visits of the doctor and the vaid to the houses of the workers and not with regard to the withdrawal or reduction of medical facilities. Demand No. 14 on the basis of which this item of dispute has been referred for adjudication is worded as under :—

“Free medical facilities of Hospital and aushdhyala either to be provided as a condition of service to the workers, their families, dependents and other dears and nears of the workers and the outsiders as well but discontinued since the introduction of the E.S.I. Scheme in the factory be restored and continued immediately”.

In my opinion the workmen have not been able to establish that there has been any withdrawal of the free medical facilities which were being previously enjoyed by them except that the doctors and v aids are now no longer visiting the houses of the workmen and since the management were only running a charitable dispensary and aushdhyala, the visits of the doctors and v aids to the houses of the workmen never became a condition of service. The workmen are, therefore, not entitled to any relief with regard to item No. 3 of the order of reference. I give my award accordingly.

No order as to cost

P. N. THUKRAL,  
Presiding Officer,  
Industrial Tribunal, Haryana, Faridabad.

Dated 8th November, 1970.

Endorsement No. 1593, dated Faridabad, the 11th November, 1970

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Dated 8th November, 1970.

No. 11063-I-Lab-70/34134.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad, in respect of the dispute between the workman and the management of M/s Raj Talkies (P) Ltd., Rohtak.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,

HARYANA, FARIDABAD

Reference No. 79 of 1970

between

THE WORKMAN AND THE MANAGEMENT OF M/S RAJ TALKIES (P) LTD., ROHTAK

Present:—

Shri. S. N. Vats, for the workmen.

Shri T. C. Puri, for the management.

#### AWARD

Sarvshri Balwant Singh, Ram Partap, Mahabir Singh, Gaje Singh, Hiri Singh, Balbir Singh, and Om Parkash, were in the services of M/s Raj Talkies (P) Ltd., Rohtak. Their services were dispensed with and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication,—vide Government Gazette Notification No. ID/RK/150-69/10541, dated 8th April, 1970.

Whether the termination of services of the following workers were justified and in order? If not, to what relief are they entitled?

1. Shri Balwant Singh.
2. Shri Ram Partap.
3. Shri Mahabir Singh.
4. Shri Gaje Singh.
5. Shri Hiri Singh.
6. Shri Balbir Singh.
7. Shri Om Parkash.

On receipt of the reference usual notices were issued to the parties in response to which the management filed their written statement. It is alleged in the written statement that the services of the workmen concerned were terminated after due consideration and in the interest of the smooth running of the Cinema and the Conciliation Officer did not give any opportunity to the management for being heard nor any regular conciliation proceedings as enjoined by law were held, therefore, the reference is bad. It is further pleaded that the management of the Cinema is in the hands of a Receiver appointed by the Hon'ble High Court and therefore if the workmen concerned have any grievance against the alleged wrongful termination of their services they should approach the High Court under whose supervision the Receiver is acting and this Tribunal has no jurisdiction. It is alleged that Sarvshri Balwant Singh and Ram Partap were found guilty of the contempt of the High Court and therefore the termination of their services was justified.

A certified copy of the judgement of the High Court given in criminal original No. 168 of 1969 and by which Sarvshri Balwant Singh and Umrao Singh were held guilty of contempt of Court has been filed by the management on the date fixed for recording the evidence and has been marked Exhibit M. 1 for the purpose of reference. The Hon'ble High Court has been pleased to hold that the Administrator who is managing the Cinema has been appointed by the Court and the only way in which the orders of an officer appointed by the Court can be revised is to approach the Court. It has been held that till the matter is revised by the orders of the Court no one has any right to interfere in the working of the Administrator which is an officer of the Court. In view of the observation made in the judgement of the High Court by which the two respondent namely Balwant Singh and Umrao Singh have been held guilty of the contempt of Court, it is clear that the present dispute could not have been referred to this Tribunal for adjudication and if the workman who have raised the present dispute are aggrieved by the order of the Administrator the only remedy as pointed out by the High Court is either to approach the Administrator himself to re-consider his order or to approach the High Court seeking revision of the order of the Administrator and any order by any other authority would amount to interference in the working of the Court and would constitute contempt of Court. I, therefore, refrain from giving any decision on the merits of the case. I give my award accordingly. No order as to costs.

P. N. THUKRAL,  
Presiding Officer,

Industrial Tribunal, Haryana,  
Faridabad.

Dated 9th November, 1970.

No. 1556, dated 11th November, 1970

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 19th November, 1970

P. N. THUKRAL,  
Presiding Officer,  
Industrial Tribunal Haryana,  
Faridabad.

No. 11064-I-Lab-70/34136. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s. Usha Spinning and Weaving Mills (P) Ltd., Faridabad.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD

Reference No. 52 of 1969

Between

SHRI RAM DIN WORKMAN AND THE MANAGEMENT OF M/S. USHA SPINNING AND  
WEAVING MILLS, (P) LTD., FARIDABAD

Present :—

Shri Darshan Singh, for the workman.

Dr. Anand Parkash, for the management.

#### AWARD

Shri Ram Din was in the service of M/s. Usha Spinning and Weaving Mills (P) Ltd., Faridabad. His services were terminated and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication,—vide Government Gazette Notification No. ID/FD/167-1-69/27908, dated 13th October, 1969.

Whether the termination of services of Shri Ram Din was justified and in order? If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. On behalf of the workman it is pleaded that his services were terminated with effect from 1st June, 1969 without any reason, charge-sheet or enquiry and it was a clear case of victimisation because the workman concerned was an active member of the union. The management in the original written statement filed by them raised an objection that a number of workmen of the name of Shri Ram Din were in their service and from the order of reference it was not clear to which Shri Ram Din the present reference related and, therefore, they are not in a position to file any written statement. Shri Darshan Singh, General Secretary of the Textile Mazdoor Union who was appearing on behalf of the workman was directed to supply the necessary particulars. The management then filed the written statement. A number of preliminary objections were again taken up. It is however not necessary to consider any of them, Dr. Anand Parkash who is appearing on behalf of the management,—vide his statement dated 3rd April, 1970, has given up the preliminary objections.

As regards the merits it is pleaded on behalf of the management that there is no industrial dispute between the workman and the management regarding the termination of services of Shri Ram Din because in fact the management never terminated the services of the said workman and so the reference is invalid. According to the management Shri Ram Din absented himself without leave with effect from 1st June, 1969 and he remained absent for more than 8 days continuously and therefore, he lost his lien on his service in accordance with the provisions of the Certified Standing Orders of the respondent company. The pleadings of the parties gave rise to the following issues.

- (1) Whether the reference is invalid and ultravires of the powers of the Government and no adjudication can take place on the basis of the same?
- (2) Whether the claimant Shri Ram Din absented himself from work of his own accord and, therefore, he is deemed to have left the services in accordance with the provisions of the Standing Order 12 (a)?

(3) Whether the claimant was an active member of the union and he has been victimised ?

(4) Whether the termination of services of Shri Ram Din was justified and in order. If not, to what relief is he entitled ?

*Issue No. 1.*—The validity of the order of reference is challenged on the ground that under section 2A of the Industrial Disputes Act a workman can raise a dispute only when his employer discharges, dismisses, retrenches or otherwise terminates his services and from the point of view of the workman the termination of his services was not justified. The stand taken up by the management is that the workman concerned absented himself from work without any intimation to the management for a continuous period of more than 8 days and therefore, under clause 12 (h) of the Certified Standing Orders he is deemed to have left the service and the management have not taken any action against him. I agree with the learned representative of the management that if this be the case then the order of reference would not be legal but as already pointed out the case of the workman is that the management have wrongfully terminated his services with effect from 1st June, 1969. The question as to whether the version of the workman or that of the management is correct is a question of fact and this question would be decided under issue No. 2. With these remarks I find this issue in favour of the workman.

*Issue Nos. 2 and 4.*—Issues Nos. 2 and 4 are connected issues and may be discussed together. In support of their case the management have produced their Labour Officer Shri Ashok Rajpute M.W. 1 and their Time Keeper Shri Yash Paul M.W. 2. Shri Ashok Rajpute M.W. 1 produced a copy of the Certified Standing Orders of the respondent concern and Shri Rachpal M.W. 2. Time Keeper brought the attendance register maintained by him and stated that the workman Shri Ram Din was absent without any intimation from the beginning of the month of June and his name was struck off from the register after waiting for him for 10 days. In rebuttal the workman produced two of his fellow-workmen namely Shri Kaleshar W.W. 1 and Ram Avtar W.W. 2 and he himself appeared as witness. The version as given by the workmen is that he was not feeling well on 1st June, 1969 and therefore he went to Shri Patel for leave but leave was refused to him and when on the next day, i.e., 2nd June, 1969 he reported for duty to Shri Patel he abused him and turned him out upon which he approached the union and a notice of demand was sent under registered cover to the management. A copy of the notice of demand sent to the management under registered cover is marked Ex. W. 1 and is dated 2nd June, 1969. Five copies of this demand notice were also simultaneously sent to the Conciliation Officer who initiated conciliation proceedings and sent a notice dated 4th June, 1969, copy Ex. W. 2 to the management for this purpose. Shri Raghbir Singh Walia W.W. 4 Head Clerk in the Labour Office was summoned in order to prove the receipt of the copies of the demand notice given by the management and the action taken on them by the Conciliation Officer. Shri Raghbir Singh Walia stated that notice of demand from the workman Shri Ram Din was received in the office on 3rd June 1969 and a copy of this demand notice was sent to the management on the next date, i.e., 4th June, 1969 and the case was fixed for the purpose of conciliation on 12th June, 1969. The workman also called upon the management to produce their receipt and despatch register in order to prove the receipt of the demand notice by them. The management only produced the despatch register and suppressed the receipt register on the plea that the receipt register was not available. It was not even stated by them that their receipt register had been lost. It appears that when the learned representative of the management found that the defence taken up by the management would not stand he came up with an application that the statement of claim on behalf of the workman was completely lacking in particulars and the workman had tried to build up his case during the course of evidence of which the management had no notice whatsoever. It was pleaded that since the management did not have proper notice of the case of the workman therefore the time keeper alone was produced but thereafter the workman was allowed to produce evidence on facts which were never pleaded in the statement of claim and under these circumstances it was essential that the management be allowed to lead evidence in rebuttal. It was further submitted that Shri Walia Head Clerk of the Labour Officer-cum-Conciliation Officer, Faridkot had appeared in evidence with the original file of the Conciliation Officer pertaining to this case. It is alleged that certain material/information was desired from this file which could not be brought on the record due to the inability of the Clerk concerned to show some of the documents which he claimed to be confidential but he had no right to make such a claim. It is urged that if all the information had been disclosed from the file of the Conciliation Officer, it would have been clear that the management had fully explained their case in the conciliation proceedings and that is why no written reply was sent to the workman when his demand notice was received by Registered post. It was pleaded that for the purpose of bringing all the facts on record it had become necessary to summon the Conciliation Officer before whom the conciliation proceedings in this case took place so that all the relevant material is brought on the file of this Tribunal. It was further pleaded that apart from this it is necessary to rebut the allegations made by the workman in his evidence. It was therefore prayed that in view of the special circumstances of the case the management may be allowed to produce further evidence.

I have carefully considered the submissions made in the application for producing further evidence and in any opinion there is no substance in the same. I have carefully gone through the evidence already produced by the parties. The case of the management from the very beginning has been that the workman Shri Ram Din absented himself without leave from 1st June, 1969 continuously for more than 8 days and therefore he lost his lien on his services as per the provisions of the Certified Standing Orders. All that the management therefore had to do was to produce a copy of the Certified Standing Orders and to prove that the workman was absent without any leave or intimation continuously for more than 8 days with effect from 1st June, 1969. It has not yet been clarified what was fully explained to the Conciliation Officer during the conciliation proceedings and what further material/information was desired from the file which could not be brought on the record due to the inability of the

clerk concerned to place the whole file before the learned representative of the management for his inspection. The management have not yet disclosed what version was put up before the Conciliation Officer which is now sought to be brought on the record.

The question which has been referred for adjudication to this Tribunal is whether the service of Shri Ram Din has been validly terminated. As already pointed out the defence taken by the management is that they have not terminated the services of Shri Ram Din at all and his services stood terminated automatically in accordance with the provisions of clause 12 (h) of the Certified Standing Orders of the respondent company by reason of his continuous absence for more than 8 days. While discussing Issue No. 1, I have already held that in case the management are able to establish that the services of the workman stood automatically terminated for the reasons stated by them then it would not be possible to say that the services of the workman were terminated by any positive action of the management and even section 2-A of the Industrial Disputes Act would have no application in such a case and it will have to be held that the order of reference is itself illegal. Thus the only question for determination in this case is whether the workman had in fact absented himself for a continuous period of more than 8 days as stated by the management and therefore he lost his lien or whether the plea taken up by the management is a mere hoax and the workman was in fact turned out by them. The onus of proving that the workman lost his service by reason of his absence naturally lay on the management. All that the workman has done in his evidence is to prove that the plea taken up by the management is false. In case the learned representative of the management felt that the onus lay upon the workman to prove that he had not abandoned the service but the management had terminated his service then the management should have come up with an application for changing the onus of the issue before starting their evidence and not come up with an application for re-opening the whole case on the ground that the workman had set up a new case. In my opinion the management could not have given an application for changing the onus because even in the order of reference as framed by the Government the onus has been put upon the management to prove that the services of the workman stand rightly terminated. There cannot obviously be any presumption in favour of the management that the workman had abandoned his service and his service had not been terminated by the management. In the first instance it is for the management to tell the Tribunal the manner in which the services of the workman came to an end and then it is the duty of the Tribunal to frame the necessary issues which arise from the pleadings of the parties. We cannot start with any presumption one way or the other. It will also be not out of place to point out at this stage that there is no provision either in the Industrial Disputes Act or in their Rules made thereunder which requires the workman to file a statement of claim. The proceedings are initiated when a notice of demand is given on behalf of the workman and a reference is made by the Government. The management are then required to file a rejoinder and if the management feel that the notice of demands is lacking in any particulars an application seeking the necessary clarifications can always be made. The management did not give any such application before the issues were framed. The workman was simply called upon to file his statement of claim by the Tribunal in routine so that if he so desired he may give any further particulars about his claim. Moreover the procedure before a Labour Court or an Industrial Tribunal is not so technical as in the Civil Court and a statement of claim which a workman is called upon to file can not be equated with a plaint and it would not be correct to say that the workman stands in the position a plaintiff in a Civil Court and the initial burden of proving his case lies upon him. In industrial adjudication, when the workman protests against the termination of his service it is the duty of the management to place before the Tribunal the circumstances in which the services of the workman came to an end and then it is for the Tribunal to frame the necessary issue which may arise from the pleadings of the parties in order to determine whether the services of the workman stand rightly terminated. It is correct that the workman in his statement of claim did not say that he was not feeling well on 1st June, 1969 and asked for the leave which was refused and on the next day when he went to report for duty he was abused and was turned out. In my opinion it was not at all necessary for the workman to say all this in his statement of claim. The workman in his claim statement also did not disclose that when he was abused and turned out he approached the union and a notice of demands addressed to the management was sent under registered cover on the same day. The workman could not possibly bring in all these facts because he could not anticipate what defence the management would take up. When the management took up the plea that they had not terminated the services of the workman but he had himself abandoned the service, it was not necessary for the workman to disclose to the management at that stage that the plea taken up by them was false because he had in fact reported for duty on 2nd June, 1969 and when the duty was refused a notice under registered cover was sent to the management on the same day. The workman could bring all these facts on record only during the course of his evidence, and he could not possibly be compelled to disclose his evidence in advance. It appears that in this case it is the management which is trying to play the game of hide and seek with the workman and not coming out with the true facts, even after the workman has closed his evidence. They are even suppressing their receipt register. The workman during the course of his evidence made an application for the purpose of summoning the despatch-cum-receipt clerk of the respondent company along with the register of receipt and despatch for the months of April to July, 1969. *vide* the order of this Court dated 22nd May, 1970, the management were directed to produce the necessary record. On the date fixed the representative of the workman made a statement that the management had produced only the despatch register and not the receipt register. Obviously the purpose of asking the management to produce their receipt register was to prove that the management had in fact received the notice of demand, dated 2nd June, 1969 which the workman had sent under registered cover to the management in order to show that the case is set up by the management that the workman has abandoned the services was not correct. In spite of the insistence of the workman to get the receipt register of the respondent company summoned, it appears that the management tried to suppress this evidence. The learned representative of the management made a statement that the receipt register was not available and it was therefore not possible to produce the same and that only the despatch register was available. The non-production of the receipt register gives rise to a presumption that the management are trying to suppress the fact that the notice of demand, dated 2nd June, 1969 was in fact received by



them. Since the management have also not so far disclosed what was the case put before the Conciliation Officer which is required to be proved, it is not possible to accept their application for the purpose of giving them an opportunity to produce any evidence in rebuttal.

As regards the merits of the case, I am of the opinion that the management have miserably failed to prove that the workman had abandoned his service by reason of his continuous absence for 10 days with effect from 1st June, 1969 and for this reason he has lost his lien on the service. On the contrary it is satisfactorily established by the evidence of the workman that he was going to the factory for the purpose of reporting for duty but the Gate Keeper did not permit him to enter the factory. This version of the workman is corroborated by the evidence of Shri Kalesher W.W. 1 and Shri Ram Avtar W.W. 2, both of whom are working in the respondent factory. Shri Kalesher had stated that he is working in the respondent factory since the year 1965 in the Ring Khata and the workman Shri Ram Din used to work with him in the same shift and they used to come together. He says that on 2nd June, 1969, Shri Ram Din came with him but he was not given duty and was turned out. Shri Ram Avtar W. W. 2 also corroborates the version of the workman that the leave for 1st June, 1969 was refused to him and on the next day when he reported for duty he was turned out. In view of the fact that the management had taken up a totally false plea that the workman had abandoned the service and did not report for duty from 1st June, 1969 onwards, I see absolutely no reason to disbelieve the evidence of the workman. In my opinion the termination of his services is not justified. I accordingly find Issue No. 2 against the management and Issue No. 4 in favour of the workman.

*Issue No. 3.*—There is no evidence to prove that the workman has been victimised. I therefore find this issue not proved.

In view of my findings above I am of the opinion that the workman is entitled to be reinstated with continuity of service and full back wages. I give my award accordingly.

P. N. THUKRAL,  
Presiding Officer,  
Industrial Tribunal, Haryana, Faridabad.

Dated 4th November, 1970.

No. 1595, dated the 11th November, 1970.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,  
Presiding Officer,  
Industrial Tribunal, Haryana, Faridabad.

Dated 4th November, 1970.

**No. 11062-I-Lab-70/34138.**—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workman and the management of Municipal Committee, Charkhi Dadri :—

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 86 of 1970

*between*

SHRI RAM AVTAR WORKMAN AND THE MANAGEMENT OF MUNICIPAL COMMITTEE, CHARKHI DADRI

*Present.*—

Shri Ram Avtar, Workman and Shri Daya Kishan for the workman.

Shri Ramji Lal, Legal Advisor and Shri K.N. Singla for the management.

#### AWARD

Shri Ram Avtar was appointed as a clerk in the respondent committee on 25th July, 1969 and worked as Tax Moharar and Cattle Pound Moharar upto 26th September, 1969 when his services were terminated. Shri Ram Avtar is aggrieved by reason of the termination of his services and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication,—*vide* Government Gazette Notification No. 1D/11507, dated 20th April, 1970.—

Whether the termination of services of Shri Ram Avtar, Moharar, is justified and in order? If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. A preliminary objection has been raised on behalf of the committee that it does not carry on any business or trade and there is no relationship between capital and labour for the various statutory duties performed by it such as collection of octroi tax etc. It is alleged that no material goods are produced by the committee and it is simply discharging the function and duties imposed upon it by the Punjab Municipal Act and for the purpose of discharging the duties it collects taxes, etc. It is alleged that the petitioner Shri Ram Avtar was appointed as a Tax/Cattle Pound Moharar and under no circumstances he can be said to be a workman. The following preliminary issue was framed in order to dispose of this preliminary objection.

“Whether Cattle Pound is not an industry?”

An opportunity was given to the parties to produce their evidence. Neither party has produced any evidence and only arguments were advanced on the question as to whether the activities of the Cattle Pound would fall within the definition of “Industry” as defined in the Industrial Disputes Act.

The definition of industry as given in section 2(j) of the Industrial Disputes Act is as under:—

“industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen;”

It is submitted by the learned representative of the Committee that Cattle Pounds are being maintained by the Committee under the provisions of Cattle Trespass Act, 1871 (Act 1 of 1871). It is one of the regal function of the Committee because this function can not be performed by a private person. No direct authority has been cited by any party. However my attention has been drawn to the various provisions of the Cattle Trespass Act in order to highlight this point. Section 4 of this Act empowers the establishment of Cattle Pound under the authority of the District Magistrate subject to the general control of the State Government and under section 5 of the control of such pounds is vested in the authorities concerned and they are entitled to fix and from time to time alter the rates of charge for feeding and watering any cattle. The functions vested in the District Magistrates have been delegated to all District Boards, Municipal and Notified Area Committee in the Punjab,—vide Notification No. 4436-LG-39/29727, dated 16th September, 1939. Section 7 to 9 enumerate the duties of the Cattle Pound Keepers and section 10 lays down under what circumstances and who can seize the cattle and send it to the cattle pound. All Police Officers are required to aid the seizure of the cattle and section 12 authorised the imposition of fines for the impounded cattle. Section 13 to 17 lay down the procedure for the delivery or sale of the impounded cattle. Section 20 provides a remedy for the illegal seizure or detention of cattle and section 22 makes a provision for awarding compensation if the seizure or detention is found to be illegal. Section 24 makes provisions for imposing a penalty for opposing the seizure of cattle or rescuing the same and section 25 provides for the recovery of penalty for mischief committed for causing the cattle to trespass.

After carefully considering the various provisions of the Cattle Trespass Act, I agree with the learned representative of the committee that the function for maintaining a cattle pound can not be entrusted to a private person. As provided in section 4 Cattle Pounds can be established and maintained only under the authority of the District Magistrate subject to the general control of the State Government and this function has been delegated to the Municipal Committee which is a local authority. It can not be said that the maintenance of cattle pound means carrying on any business, trade, undertaking, manufacture or calling of employers. I, therefore, uphold the preliminary objections of the Committee that the maintenance of the Cattle Pound is not an industry and the reference is therefore not legal. I give my award accordingly. No order as to cost.

Dated 4th November, 1970

P.N. THUKRAL,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 1555, dated the 11th November, 1970

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 4th November, 1970

P.N. THUKRAL,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.